



Region 4 Headquarters  
4600 Giant Springs Road  
Great Falls, MT 59405

March 29, 2018

Dear Interested Citizens:

Thank you for your review and consideration of a proposal by Montana Fish, Wildlife & Parks (FWP) to purchase a conservation easement (CE) from the Rumney Cattle Company. The CE, known as the Birdtail, would conserve approximately 3,980 acres of important wildlife habitat by preventing subdivision, development and other forms of habitat loss; perpetuate the agricultural lifestyle of the Rumney Cattle Company who would own the land under easement; and guarantee public recreational access to the property.

Enclosed is a decision document in which FWP explains its rationale for choosing the Proposed Action alternative and recommending that the Fish & Wildlife Commission approve this conservation easement as proposed. Upon completion of the public involvement process and by including this Decision Notice, FWP accepts the draft environmental assessment (EA) as final.

Fish, Wildlife & Parks will request final action for the proposed Birdtail conservation easement from the Fish & Wildlife Commission at its scheduled meeting on April 19, 2018.

For further questions regarding this project please call the FWP Great Falls office at (406) 454-5840. Thank you for your interest and participation.

Sincerely,

Gary Bertellotti  
Region 4 Supervisor



**DECISION NOTICE**  
**Birdtail Conservation Easement**

Region 4 Headquarters  
4600 Giant Springs Rd.  
Great Falls, MT 59405  
(406) 454-5840

**DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVE CONSIDERED**

Proposed Action

Montana Fish, Wildlife and Parks (FWP) proposes to purchase a Conservation Easement (CE) from the Rumney Cattle Company on their approximate 3,980-acre property located approximately 13 miles northwest of Cascade, Montana on the north edge of the Birdtail Hills (Cascade County). This property and subsequent proposed CE is known as the Birdtail. The easement would conserve important wildlife habitat located on primarily intermountain foothill habitat by preventing subdivision, development and other forms of habitat loss; perpetuate the agricultural lifestyle of the Rumney Cattle Company who would own the land under easement; and guarantee public recreational access to the property. The land would remain in private ownership and on state and county tax rolls.

No Action

Identical to the implementation of the Proposed Action, the No Action Alternative would not impact local taxes and public services if the land continued to be managed and maintained in its current form. However, any potential future ownership changes could allow greater potential for changes in land use classifications (e.g., agricultural to recreational) that could increase local property taxes for the county. Also, a change in ownership and land use may lead to subdivision and or additional residential development, which may be accompanied by higher demand for utilities, roads, and other services that would have to be partially or wholly provided by state and local governments. In the future, the potential for the property to remain in its current, unbroken native rangeland state, or the possibility for public access to or across the property, would be uncertain.

**MONTANA ENVIRONMENTAL POLICY ACT PUBLIC PROCESS**

Fish, Wildlife & Parks is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of its proposed actions to the human and physical environments, evaluate those impacts through an interdisciplinary approach, including public input and make a decision based on this information. Fish, Wildlife & Parks released a draft Environmental Assessment (EA) for public review of the proposed alternatives on January 19, 2018 and accepted public comment until 5:00 P. M. on February 19, 2018.

Notice of the proposal and availability of the Draft EA was published in the Great Falls Tribune, Cascade Courier, Ravalli Republic, Missoulian and Montana Standard newspapers. Copies of the EA were distributed to Cascade County Commissioners/Planners, neighboring landowners, interested individuals, groups, and agencies to ensure their knowledge of the proposed project. The EA was also available for public review on FWP's web site (<http://fwp.mt.gov/>, "Recent Public Notices" and "Submit Public Comments") from January 19 through February 19, 2018. An FWP public notice was also issued and posted on FWP's website (<http://fwp.mt.gov/>, "News Releases").

A public meeting was hosted at the Wedsworth Hall in Cascade (13 Front Street South) on Tuesday, January 30, 2018 at 7:00PM. Fourteen members of the public were in attendance.

### **SUMMARY OF PUBLIC COMMENT**

FWP received a total of 35 written comments via email, regular mail and at the public meeting. A breakdown of the comments is as follows: 31 were in support of the Proposed Action (purchase of the conservation easement), 1 supported the No Action Alternative and 3 did not specify.

Those comments in favor of the proposed action can broadly be summarized into three different categories: 1) providing and sustaining valuable non-fragmented wildlife habitat, 2) year-round public recreational access in perpetuity, and 3) ownership and maintenance of the land would remain in private ownership and agricultural status as well as a cooperatively managed grazing system.

The one comment opposed to the Proposed Action stated there was no need for the state (FWP) to purchase a conservation easement on the property given abundant wildlife habitat already available. While we agree that there is currently abundant wildlife habitat available, one of the primary intentions of the proposed conservation easement is to secure this habitat in perpetuity. Under the No Action Alternative, current and future management options would be left open for the current and/or potential future landowners to manage as desired. The potential for the property to remain in its current unbroken, native rangeland state would be at the discretion of current and/or future landowners.

### **RESPONSE TO OTHER COMMENTS OR QUESTIONS**

*Question:* Why is there only one parking area and no option for additional motorized access (e.g., hunting game retrieval, handicapped access) within the public access terms?

*Answer:* Recreational public access are negotiated terms with the landowner. Given the layout of the property with respect to one accessible county road and existing service roads within the property, it was deemed that providing the two parking areas and associated access road identified within the management plan was appropriate. Both FWP and the landowner believe there is not a significant need to provide additional formal access options in order to limit threats the conservation values of the property and maintain a good recreational (hunting) experience.

*Question:* Will there be mention of any particulars with regard to preservation of prehistoric/historic present on the property?

*Answer:* Within the EA, it was stated that the proposed action and associated management regime(s) would not cause a significant change in land use, hence, FWP anticipates there would be no change in impacts to any present or potentially present historical and/or cultural sites. The application of the CE

on the property should secure the natural and cultural resource values that exist on the property. There are known teepee rings found near the northern end of the property made out of heavy shonkinite rocks. These are durable features and are believed to be in little to no danger of disturbance with respect to ongoing primary property use by the landowner (seasonal cattle grazing). Under the No Action Alternative and if the Ranch practices significantly change or if the property was sold to an alternative owner, changes in land uses may increase impacts to cultural resources that occur or potentially occur on the property.

*Question:* Would the property be taxed at a different (lower) rate than it currently is being taxed at?

*Answer:* Under the Proposed Action Alternative, there would be no effect on local or state tax bases or revenues, no alterations of existing utility systems or tax bases or revenues, nor increased use of energy sources. As an agricultural property, the Land would continue to be taxed as it has before. However, the terms of the CE would restrict future residential and commercial developments on the properties lands.

*Question:* Would the public be allowed unrestricted access or would an individual need prior permission and approval to access the property?

*Answer:* In general and briefly, the property will be open to public hunting (generally identified as September 1 – January 1) and other general recreation use year round. Outside of the general hunting seasons, landowner notification would be required for those interested in recreating prior to entering the property. For further details, please refer to the CE and associated Management Plan.

Other questions/comments received, but ultimately considered to be outside the scope of the EA and CE include consideration of FWP getting first right of refusal rights as/if the property were ever to sell and what should be done with the older homestead buildings present on the property. With respect to the homestead buildings, the CE does not specify future direction as to what should be done with these buildings. It is ultimately up to the landowner to decide the future management (preservation) or removal of these buildings, as long as any final decision and direction falls in line with the overall conservation values of the easement.

Lastly, there has been modification to some language in Section II. C. 12. of the conservation easement (Oil and Gas Exploration, Extraction, and Development). Although these changes are not believed to be significant, the changes are included in Appendix A in this decision notice for reference.

## **DECISION**

In reviewing all the public comment, evaluating the environmental effects, and other relevant information, I recommend that FWP pursue the completion of the Birdtail Conservation Easement Project and recommend that the Fish & Wildlife Commission approve the proposed action. This action will also require the approval of the Montana Land Board at an upcoming meeting.

Through the MEPA process, FWP found no significant impacts on the human or physical environments associated with this proposal. Therefore, the EA is the appropriate level of analysis, and an environmental impact statement is not required.

After review of this proposal, it is my decision to accept the draft EA as supplemented by this Decision Notice and the response to public comment contained herein. In combination, these documents constitute the Final EA. Fish, Wildlife & Parks believes the completion of this project is in the best interests of working agricultural landscapes, fish and wildlife and public recreation.

  
\_\_\_\_\_  
Gary Bertellotti  
Region 4 Supervisor  
MT Fish, Wildlife & Parks

29 March 2018  
Date

## Appendix A.

### OLD LANGUAGE:

- 12. Oil and Gas Exploration, Extraction, and Development.** The right to explore for and extract oil and gas in, on, or under the Land, subject, however, to the following conditions:
- a. Landowner may explore for and extract oil and gas only if such activity will not result in significant impairment or interference with the Conservation Values.
  - b. Development of oil and gas may only be conducted by subsurface methods (e.g., well drilling) and must be conducted in a manner consistent with site-specific stipulations as mutually agreed upon by the Department and the Landowner and as necessary to protect the Conservation Values. Under no circumstance may any oil or gas be removed by any surface mining method; it being understood, however, that wells may be drilled and hydrocarbon minerals may be removed at the ground surface, which shall not constitute surface mining as used herein.
  - c. No oil and gas exploration, development or extraction activity may take place within or upon wetland and riparian areas, and no oil and gas operation may degrade the quality of any surface water, stream, or ground water. Any water degraded in quality resulting from permitted exploration or extraction activities must be piped off of the Land or, subject to **Prior Approval**, disposed of by other methods.
  - d. Any incidental surface disturbance resulting from permitted exploration or subsurface extraction activities must be limited, localized, and temporary, and the surface shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by reclaiming land contours, by restoring soils, by replanting and tending native vegetation until the vegetation is mature, established, and self-perpetuating.
  - e. Access for exploration or extraction activities shall be by existing roads; provided, however that, subject to **Prior Approval**, a new road for this purpose may be constructed if such road is sited and maintained so as to avoid adverse impacts to the Conservation Values. Any new road shall be restored as nearly as practicable to its previous condition after exploration and extraction activities are concluded.
  - f. No refinery or secondary production facility may be located on the Land. Any oil and gas developed or produced from the Land must be transported from the Land in a manner that does not impair the Conservation Values, and the method of and facilities for such transport are subject to **Prior Approval**. The number and kind of structures used in the exploration for or extraction of oil and gas shall be limited to the minimum necessary to accomplish exploration, development or extraction. Upon the termination of any phase of exploration, development or extraction, all associated structures (that are not necessary for the subsequent phase) shall be removed and those portions of the Land no longer being used for the oil and gas operation shall be restored as nearly as practicable to their previous

condition.

- g. For oil and gas and other mineral rights held by a third party, Landowner agrees to notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the Department shall confer to review the proposed activity and to determine ways to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.
- h. The Landowner must provide **Prior Notice** to the Department before entering into any lease or other agreement for oil and gas exploration or development on the Land.

NEW LANGUAGE:

- 12. Oil and Gas Exploration, Extraction, and Development.** The Landowner has the right to explore for and extract oil and gas in, on, or under the Land, subject, however, to the following conditions:
- a. Landowner may explore for and extract oil and gas only if such activity will not result in significant impairment or interference with the Conservation Values.
  - b. Development of oil and gas may only be conducted by subsurface methods (e.g., well drilling) and must be conducted in a manner consistent with site-specific stipulations as mutually agreed upon by the Department and the Landowner and as necessary to protect the Conservation Values. Under no circumstance may any oil or gas be removed by any surface mining method; it being understood, however, that wells may be drilled and hydrocarbon minerals may be removed at the ground surface, which shall not constitute surface mining as used herein.
  - c. No oil and gas exploration, development or extraction activity may take place within or upon wetland and riparian areas, and no oil and gas operation may degrade the quality of any surface water, stream, or ground water. Any water degraded in quality resulting from permitted exploration or extraction activities must be piped off of the Land or, subject to **Prior Approval**, disposed of by other methods.
  - d. Any incidental surface disturbance resulting from permitted exploration or subsurface extraction activities must be limited, localized, and temporary, and the surface shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by reclaiming land contours, by restoring soils, by replanting and tending native vegetation until the vegetation is mature, established, and self-perpetuating.
  - e. Access for exploration or extraction activities shall be by existing roads; provided, however that, subject to **Prior Approval**, a new road for this purpose may be constructed if such road

is sited and maintained so as to avoid adverse impacts to the Conservation Values. Any new road shall be restored as nearly as practicable to its previous condition after exploration and extraction activities are concluded.

- f. No refinery or secondary production facility may be located on the Land. Any oil and gas developed or produced from the Land must be transported from the Land in a manner that does not impair the Conservation Values, and the method of and facilities for such transport are subject to **Prior Approval**. The number and kind of structures used in the exploration for or extraction of oil and gas shall be limited to the minimum necessary to accomplish exploration, development or extraction. Upon the termination of any phase of exploration, development or extraction, all associated structures (that are not necessary for the subsequent phase) shall be removed and those portions of the Land no longer being used for the oil and gas operation shall be restored as nearly as practicable to their previous condition.
- g. Landowner and the Department acknowledge that, at the time this Easement is executed, certain third parties own or lease all, or a portion of, the oil, natural gas, and other mineral substances under the Land. If those third-party interests have not been subordinated to the Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party, which is not subject to the terms of this Conservation Easement unless expressly subordinated thereto. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities.

This Conservation Easement does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.